

FAYETTEVILLE STATE UNIVERSITY

PROCEDURES FOR REVIEWING DECISIONS INVOLVING NON-REAPPOINTMENTS, DENIALS OF TENURE AND DENIALS OF PROMOTION

I. REVIEW PROCEDURES

A. Purpose of Review

The purpose of reviewing Non-Reappointment, Denial of Tenure, and Denial of Promotion decisions is to determine whether the decision was based on an Impermissible Basis (as defined in Section 604C(1)(d) of *The Code* and Section VI of Fayetteville State University's *Faculty Appointment, Promotion and Tenure* policy). Thus, a review is not to second-guess professional judgments based on permissible considerations.

B. Basis of Review

A decision not to reappoint, deny tenure, or deny a promotion (hereinafter referred to as the Decision) may be made for any reason that is not an Impermissible Basis. An Impermissible Basis exists when the decision is based on any of the following: (1) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution; (2) the faculty member's membership in a group protected from discrimination under state or federal law; (3) other violation of state or federal law; or (4) material violation of applicable University policies for reappointment, promotion, and tenure that materially affected the decision.

C. Role of the Hearing and Reconsideration Committee

The role of the Hearing and Reconsideration Committee (hereinafter referred to as "HRC") is to provide the opportunity for both the Faculty Member and the respective department chair, committee chair, dean, provost (hereinafter referred to as "Respondents") to present relevant evidence at a hearing. The HRC is also required to create a clear, permanent record of the evidence received at a hearing and make a recommendation to the Chancellor whether the Faculty Member has demonstrated, by a preponderance of the evidence, that the Decision was made based on an Impermissible Basis.

The HRC does not have authority to render a decision or any part of a decision, only the Chancellor has the authority to render the final decision.

D. The Scope of Review

The scope of review by the HRC is specified in Section VI of the *University's Faculty Appointment, Promotion and Tenure* policy (hereinafter, the *Policy*). Section VI.C.4 states as follows:

A decision under this Section shall not be based upon (1) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution; (2) the faculty member's membership in a group protected from discrimination under state or federal law; (3) other violation of state or federal law; or (4) material violation of applicable university policies for reappointment, promotion, and tenure that materially affected the decision

E. The Burden and Standard of Proof

Unlike dismissal or the imposition of other serious sanctions, the Faculty Member has no constitutionally protected expectation of reappointment, promotion or tenure. Thus, a hearing begins with the presumption that the Decision was properly made and the burden of proof in such cases rests with the Faculty Member and not with the Respondents. That presumption continues unless and until the HRC is satisfied that the Faculty Member has proven otherwise.

The standard of proof, i.e., the degree of proof required, is proof by a preponderance of the evidence. The HRC determines whether this burden of proof has been met by weighing all of the evidence and the demeanor and credibility of the witnesses, in the light of experience and common-sense judgments.

F. Pre-Hearing Procedures

1. Written Request for a Hearing

The Faculty Member shall have at least 30 calendar days upon receiving the notice of the decision to request a review of the decision on the grounds that the faculty employment decision was based on an Impermissible Basis .

The request shall include (a) the grounds upon which the Faculty Member contends that the decision was impermissibly based and facts to support such claim(s), and (b) the identity of the administrator(s) and/or committee chair(s) who made the Decision which the Faculty Member alleges was based on an Impermissible Basis.

2. Notification of Request for Review

Upon the receipt of a request for review, the HRC Chair shall notify, in writing, the Respondents and provide each Respondent with a copy of the Faculty Member's request for review.

HRC members, the Faculty Member and Respondents shall be required to sign a confidentiality agreement.

3. Initial Evaluation of Written Request from Faculty Member

Upon receiving a written request for review from a Faculty Member, the HRC shall decide if the request for review should be granted by determining if the request specifies one of more of the Impermissible Basis upon which the faculty

member contends that the decision(s) was based and the facts outlined, if established, might support the contention(s).

4. Decision by HRC Whether to Grant Request for Review

- a. If the request is granted, a hearing shall be scheduled. The Faculty Member and the Respondents shall be given at least ten (10) calendar days' notice of the hearing, and each will be sent a copy of these procedures. The HRC chair may seek agreement from the Faculty Member and Respondents to extend these time limits if the limits are viewed as impractical.
- b. A denial of the request for review confirms the decision not to reappoint. The HRC chair shall write a simple statement to the Faculty Member indicating that the Faculty Member's request for a hearing has been denied. A copy of that letter shall be sent to the Respondents.

5. Arrangements for Court Reporter and Transcript

If a decision is made to grant the Faculty Member a hearing, the HRC Chair shall contact the Divisions of Legal, Audit, Risk and Compliance (LARC) to arrange for a court reporter. The court reporter shall make a verbatim record of the hearing. Either of the parties desiring a transcript may obtain one by making a request to LARC.

6. Notification of Attendance by a Representative or Attorney

Although active participation by legal counsel during the hearing is not allowed, the Faculty Member and the Respondents may each be accompanied by a third-party observer. A third-party observer may be an attorney; however, the attorney may not participate actively in the hearing process. No later than fifteen (15) days prior to the hearing, Faculty Member shall notify the HRC Chair, Respondents, and the University's General Counsel of the Faculty Member's intent to be accompanied by legal counsel. If the Faculty Member intends to be accompanied by legal counsel, the University may elect to obtain counsel to represent Respondents and may request a reasonable continuance of the hearing date for that purpose.

Upon request by the HRC Chair, LARC shall obtain counsel to provide procedural advice to the HRC. Any attorney who assists the HRC may not discuss the merits of the case with any party, observer, or other attorney and shall not act as an advocate for or against any party when advising the committee on procedures.

7. Witnesses and Exhibits

- a. In the spirit of avoiding unfair surprise, and to facilitate the hearing process, the parties shall provide a list of witnesses and copies of exhibits they intend to introduce at the hearing, to each other, and to the HRC chair, at least five (5) days prior to the date set for the hearing. No

evidence shall be provided to the HRC (except the chair) prior to the hearing.

- b. If a party wishes to introduce exhibits at the hearing that were not included in the pre-hearing exchange, the HRC chair shall decide whether there is a good reason for accepting such evidence.
- c. Exhibits must be numbered sequentially and identified by party; e.g., Faculty Member's Exhibit No. 1, Respondents' Exhibit No. 3, or Committee's Exhibit No. 5. The exhibit numbers shall be written on the exhibits and page numbered at the time they are first presented to the HRC. References to documents during the hearing shall be by exhibit number with page references as applicable.
- d. The HRC has no authority to compel the attendance of witnesses. However, the HRC Chair may request that the Chancellor ensure that all witnesses who are employees of the University are given permission to attend the hearing.

G. The Hearing

1. Call to order-Quorum

The HRC Chair shall call the hearing to order, determine whether a quorum exists, and explain the hearing process. A quorum consists of a simple majority of the total HRC membership.

2. Challenge to HRC Membership

Committee members who hold an appointment in the Faculty Member's department, who will testify as witnesses, or who have any other conflict of interest, are disqualified from participating in the hearing. Following the call to order, each party will be given an opportunity to challenge an HRC member's qualifications to serve. The HRC (excluding the HRC member under challenge) will decide whether to grant or deny that challenge based on a majority vote.

3. Opening Remarks

Starting with the Faculty Member, each party will be given the opportunity to make opening remarks limited to five (5) minutes each. The purpose of opening remarks is to orient the HRC to the nature of the case and to the facts the parties intend to establish. Opening remarks shall not be considered evidence.

4. Faculty Member's Case in Chief

At the conclusion of opening remarks, the Faculty Member shall present evidence (witnesses, documents, his or her own testimony, etc.) in support of his or her allegation(s). All witnesses maybe questioned by members of the HRC, the Faculty Member and the Respondents. Except under extraordinary circumstances, Faculty Member will be limited to a total of three (3) hours to present his or her case. Faculty Member may reserve a portion of those three (3) hours for rebuttal at the conclusion of Respondents' evidence. If the Faculty Member wishes to reserve rebuttal time, Faculty Member must notify the HRC chair of that fact at the beginning of the hearing.

5. Respondents' Case

The Respondents may present evidence (witnesses, documents, his or her own testimony, etc.) in support of the decision not to reappoint. All of Respondents' witnesses may be questioned by members of the Committee, the Respondents and the Faculty Member. Except under extraordinary circumstances, Respondents will be limited to a total of three (3) hours to present his or her response.

6. Faculty Member's Case in Rebuttal

At the close of Respondents' case, the Faculty Member may submit evidence which rebuts the Respondents' evidence. The Faculty Member shall not be allowed to present evidence outside of the evidence presented by Respondents at the hearing.

7. Closing Remarks

At the conclusion of all the evidence, Faculty Member may make closing remarks to the HRC, followed by the closing remarks of Respondents. Closing remarks shall not exceed fifteen (15) minutes each.

II. POST-HEARING PROCEDURES

After closing remarks are concluded, the HRC Chair shall conclude the hearing and the HRC shall withdraw into closed session. If the HRC prefers to review the written transcript, the HRC Chair will adjourn and reconvene the HRC after the transcript becomes available, otherwise, the HRC may begin its deliberations immediately.

In reaching written recommendations to the Chancellor, the HRC shall consider only the evidence presented by the Faculty Member and Respondents, including the written record of the decision. The HRC's recommendation to the Chancellor shall be by majority vote. The HRC Chair shall notify, in writing, the Chancellor of its recommendation.

Revised 10/2023